

**MINUTES  
of the  
THIRD MEETING  
of the  
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE**

**July 17-18, 2014  
Ruidoso Convention Center  
111 Sierra Blanca Drive  
Ruidoso, New Mexico**

The third meeting of the New Mexico Finance Authority (NMFA) Oversight Committee was called to order by Senator Joseph Cervantes, chair, on Thursday, July 17, at 9:55 a.m. at the Ruidoso Convention Center in Ruidoso, New Mexico.

**Present**

Sen. Joseph Cervantes, Chair  
Rep. Patricia A. Lundstrom, Vice Chair  
Rep. Alonzo Baldonado (7/18)  
Rep. Ernest H. Chavez  
Sen. Lee S. Cotter (7/17)  
Rep. Roberto "Bobby" J. Gonzales  
Sen. Phil A. Griego  
Sen. Ron Griggs  
Rep. Jimmie C. Hall  
Rep. Yvette Herrell (7/17)  
Sen. Michael Padilla  
Rep. Jane E. Powdrell-Culbert  
Rep. Debbie A. Rodella  
Sen. William P. Soules  
Rep. James P. White

**Advisory Members**

Rep. Sharon Clahchischilliage  
Rep. Anna M. Crook  
Rep. Kelly K. Fajardo  
Rep. Mary Helen Garcia  
Sen. Mary Kay Papen

**Absent**

Rep. Candy Spence Ezzell  
Rep. Dona G. Irwin  
Sen. John C. Ryan  
Rep. Henry Kiki Saavedra

Sen. Sue Wilson Beffort  
Sen. Jacob R. Candelaria  
Rep. Brian F. Egolf, Jr.  
Sen. Stuart Ingle  
Rep. Emily Kane  
Sen. Timothy M. Keller  
Rep. W. Ken Martinez  
Sen. George K. Munoz  
Sen. Bill B. O'Neill  
Sen. William H. Payne  
Sen. John Pinto  
Sen. Nancy Rodriguez

Sen. Clemente Sanchez  
Rep. Edward C. Sandoval  
Rep. Sheryl Williams Stapleton  
Rep. James R.J. Strickler  
Rep. Thomas C. Taylor  
Rep. Monica Youngblood

**Guest Legislator**

Rep. Zachary J. Cook

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Renée Gregorio, Legislative Council Service (LCS)  
Gordon Meeks, LCS  
Tessa Ryan, LCS

**Thursday, July 17**

**Report from the NMFA Board**

John E. McDermott, chair, NMFA board, began his presentation by saying that he would be giving a commentary from the board's perspective. He added that Robert P. Coalter, chief executive officer of the NMFA, is celebrating his six-month anniversary with the NMFA, is bringing the kind of professionalism that the board expects and is becoming indoctrinated to New Mexico.

Mr. McDermott stated that 10 loans closed in June 2014, with seven of those loan amounts being greater than \$1 million each. He said that the series 2014 bonds that closed on June 10 were for \$31.94 million and that the NMFA maintained its high ratings in this sale. The NMFA contracted with REDW, LLC, to perform its 2014 audit and issued a request for proposals (RFP) for its internal auditing services. The proposals are due on July 18, and the NMFA expects to award a contract by the beginning of September.

Mr. McDermott indicated that the board approved the NMFA's 2015 budget. Included in the data presented to the committee is a statement of net position, which shows details of the loans paid off. The operating budget indicates that the NMFA ended 2014 with 88% of its budget being used. In its statement of revenues and expenditures, the NMFA's income ended at a 7% loss. Loans by type between fiscal years 2013 and 2014 show mostly an increase in volume, while the Public Project Revolving Fund (PPRF) loans decreased due to a reduction in bonding ability, he explained. He added that the NMFA's underwriting abilities continue to yield high ratings with both Moody's and Standard & Poor's.

Mr. Coalter provided an audit findings matrix to committee members, showing that all but two recommendations have been completed, i.e., the internal audit position and the system implementation for loan origination (SILO), which are both in process. He elaborated on the NMFA's automation initiative, a prerequisite for the SILO, which Mr. McDermott agreed is extensive and necessary because the tools used currently consist of manual data collection and tracking. Mr. Coalter said that federal regulations also compel automation. He added that the NMFA will complete a process analysis before it selects a SILO to ensure the lowest cost for the most effective system.

Finally, Mr. McDermott gave a breakdown of the board's composition, adding that the board is composed of members who are competent in needed roles. Board members participate on a pro bono basis, and there is excellent attendance at meetings, he said. Mr. Coalter highlighted the NMFA's organizational chart, saying that all employees have extensive experience. He ended by stating that the NMFA staff is great; the need now is to beef up its systems.

Senator Cervantes opened up the meeting to questions and concerns from committee members. Questions and responses included the following.

- Six of the 89 school districts are represented on the "top five largest loans by quarter" listing, and the NMFA provides low-cost financing to all entities on a case-by-case basis based on what is being funded.
- Repayment of the NMFA loan to the Pueblo of Santa Ana involves a general pledge of all revenue sources of the pueblo, and the NMFA has ensured that the loan is in no way connected with the casino there.
- There is a distinction between internal and external audits required by the NMFA; external audits are those required by the state auditor, whereas internal audits are related to operations, risks and balances within the organization and the ranking of these to determine which areas need to be audited.
- New market tax credits have to be applied to low-income census tracts and other areas that are underserved.
- Although the NMFA might get involved in financing for infrastructure related to housing development, the New Mexico Mortgage Finance Authority handles housing financing.
- The annual report of Water Trust Board (WTB) activity has not been presented to the legislature as required in many years; the NMFA submitted this report in May, and the 2014 report will be available on October 1.
- Regarding WTB loans, there is flexibility that allows forgiveness on loan payments in emergency situations.
- A \$100 million unsecured line of credit at Wells Fargo allows the NMFA to access money as needed, which gives the NMFA a six-month buffer to keep its lending going even if the credit market is in chaos; when the NMFA issues bonds, it pays this back with these proceeds.

Among requests made by committee members or follow-up actions needed are the following:

- the NMFA has only one charter school loan now and will look into how to manage future charter school loans;
- the NMFA will make board minutes available to committee members;
- in an effort to compare its various loans, the NMFA will provide a report on loans by category and progress; and
- the NMFA will compile a table that shows the status of all of its loans in terms of loan forgiveness and defaults.

### **Programs, Progress, Performance and Plans: Economic Development Revolving Fund (EDRF)**

Marquita Russel, chief of programs at the NMFA, described the Statewide Economic Development Finance Act (SWEDFA) as a financing vehicle for private entities to help stimulate the economy in rural and underserved areas. The NMFA partners with the Economic Development Department (EDD), she added, in selecting projects for funding. The EDRF is the only fund created in this act, and projects funded from the EDRF originally required legislative authorization prior to funding. In 2011, the legislative authorization provision was suspended because the cycle of legislative authorization impeded the NMFA's need for temporal fluidity in order to receive federal funding. Absent a reauthorization, the suspension of legislative authorization will end in 2016.

The EDRF allows for both direct loans and loan participation programs, Ms. Russel explained. The EDRF loan participation programs include the Smart Money Loan Participation Program (Smart Money LPP) and the Collateral Support Participation Program (Collateral Support PP). In the Smart Money LPP, the NMFA shares the risk of default equally with a bank. In the Collateral Support PP, the NMFA purchases a portion of the bank's loan and is not in an equal position with the bank for risk or gain. Both give the bank the flexibility to advance capital to a business. Ms. Russel added that the NMFA's participation is pretty seamless and the borrower need only to fill out one application per loan. She said that the change in the economy in 2008 diminished the value of this program, but once the legislative authorization provision discussed in the prior paragraph was removed, the program started growing again.

Ms. Russel gave details of the Smart Money LPP, saying that, to date, five loans have been made for projects in Alamogordo, Raton, Las Vegas, Las Cruces and Hobbs. The PreCheck, Inc., loan is paid, and the loan to Western Wood Products is through the authorization process. In the Landmark at Desert Gardens project, she reported that an out-of-state operator purchased and renovated a care facility, which allowed jobs to remain in Hobbs.

When a loan does not perform as expected, as with the Western Woods Products loan, the loan can be restructured, Ms. Russel explained. In June 2011, the loan was placed on nonaccrual

status, and the company filed for bankruptcy protection in June of that year and is now being paid off again with a current balance of around \$1.2 million. Another troubled loan in this program is the Plaza Hotel loan through Valley National Bank, which negotiated a forbearance agreement, then foreclosed the loan and liquidated the assets. This took over two years to work through, she said. After liquidation, the value is about \$860,000, Ms. Russel added.

In the Collateral Support PP, the NMFA administers funding that comes through the federal Small Business Jobs Act of 2010, which funding is intended both to lessen risk to the banks and increase the flow of capital to small businesses. Ms. Russel said that the state has to leverage 10 private dollars for every federal dollar received. She stated that there are a lot of working capital lines of credit available with federal money and that the NMFA can provide these on a subordinated basis. Ms. Russel then said that the biggest issue is often that the collateral value is insufficient to meet regulator guidelines and that the NMFA takes a piece of the loan in order to be within the bank's policy limits. Ms. Russel concluded by saying that the board is updated monthly on all loans.

The chair then opened up the meeting to questions and concerns from committee members. Questions and responses included the following.

- The Collateral Support PP and Smart Money LPP operate by the same rules but with different policies; in the Collateral Support PP, federal money can be subordinated to the bank's collateral position, which allows a financial deal to be completed.
- With collateral loan support, the NMFA has a higher loan-to-value ratio and can lend against the same collateral pool as the bank to get a project done; in one example, the bank sold the NMFA a portion of its loan.
- Banks come to the NMFA when they cannot complete a loan themselves. Credit unions could be a future customer for the NMFA.
- The EDD reviews projects in about three to four days, which is the same time frame as the application process that the NMFA completes; then the board meets monthly, and there is a monthly credit review.
- The NMFA receives interest on projects that are funded through the Smart Money LPP and administrative funds for federal money received through the Collateral Support PP.
- For the New America Charter School project funded through the Smart Money LPP, revenues come from the school lease, and the loan is being paid to the bank, which in turn pays the NMFA.
- Once a charter school owns its facility or has a lease-purchase agreement, then it becomes state property; charter schools need to be in state-owned buildings by 2015, as required by law.
- With the loans from the Collateral Support PP, private leverage occurs with new construction projects; on existing projects, equity can be contributed as private leverage.

- The NMFA wrote off the Plaza Hotel loan; the fund itself absorbed the loss, and the NMFA will begin to see revenue in the recovery of this loan.
- On the Plaza Hotel loan, Valley National Bank foreclosed on the property, purchased it under foreclosure action, then sold it to an agent who operates it, all of which has nothing to do with the existing loan, which has to be paid by a guarantor.
- Is the Smart Money LPP still working as a program to stimulate jobs and is this program the best use of the \$5 million that is in it?
- Although the NMFA is not making current recommendations for the Smart Money LPP, it may want to make the program more efficient.
- The legislation that created the SWEDFA was intended to shore up New Mexico's support of small businesses and target the inability of small banks to fund businesses in their area because of legal lending limits; although this initial goal changed because of changes in the economic climate, there are still a lot of projects that cannot get funding because of regulatory shifts.
- Few banks are interested in the Smart Money LPP because of the shared collateral.

Committee members requested that the NMFA provide a chart of collateral support loans approved to date that includes locations of projects.

### **Approval of Minutes**

Upon a motion made and seconded, the minutes of the May meeting were approved.

### **Computation and Compilation: NMFA Budget**

Donna Trujillo, chief financial officer at the NMFA, spoke first about the NMFA's basis for budgeting and explained that the NMFA distinguishes between operating revenues and expenses, which include income and fees charged to borrowers; interest expense and program support; and nonoperating items, including governmental gross receipts and other tax distributions. While there are divisions and departments, Mr. Coalter stated that the best way to look at the overall budget is by program. He said that on a daily basis, employees allocate time to a program and that this time is calculated into the budget and cost for each program, which allows the NMFA to see whether programs are cost-effective.

The PPRF program is made possible through the NMFA's \$26 million share of the backing provided by the governmental gross receipts tax (GGRT), Ms. Trujillo explained. In addition, the NMFA uses this as a base of capital from which to make loans and replenishes the fund by issuing bonds that are secured by the loans. In reporting on the budget for administering the PPRF program, she pointed to a table in the handout that gives a percentage of the overall budget that represents the costs of the PPRF program.

Ms. Trujillo indicated that there is some fluctuation in the budget in terms of what percentage of cost is attributable to each program: for the PPRF in 2014, it is estimated that outstanding loans will amount to \$1.13 billion and bonds issued will amount to \$1.12 billion.

The PPRF program is the NMFA's largest and requires 46,000 hours of activity, which includes loan origination, closing and servicing; bonding activities; and accounting and reporting.

Next, Ms. Trujillo discussed the legislature's 2011 enactment of the Water Project Finance Act and the Water Project Fund (WPF). Per statute, she added, the WTB is responsible for adopting rules that govern the terms and conditions for grants or loans recommended by the WTB for appropriation from the WPF by the legislature. She said that funding for these water projects comes from Water Trust Fund (WTF) distributions (at \$4 million annually), 10% of severance tax bond proceeds and repayments from the loans of projects already awarded. The largest expenditure for these projects is for the projects themselves, and other expenses are for adjudication and operations. The NMFA's proposed 2015 budget indicates that WTB program costs will total nearly 14% of the NMFA's total budget.

In describing the Drinking Water State Revolving Loan Fund (DWSRLF), which was authorized in the federal Safe Drinking Water Act, Ms. Trujillo said that this is a low-cost loan fund that is used to make improvements to water systems so that they comply with the act's requirements and protect drinking water quality. This program is monitored by the federal Environmental Protection Agency (EPA), and federal requirements include that the cost allocation for these projects must be equitable; the EPA also audits this program, she added. Sources for this program are DWSRLF federal distributions (currently \$8 million annually), state matching funds from the PPRF and repayments from the loans of projects already awarded. Expenditures from the fund go primarily to the projects themselves and also to the Department of Environment (NMED) and for operations. The NMFA's proposed 2015 budget indicates that DWSRLF costs will total 9.94% of the NMFA's total budget.

Ms. Trujillo discussed the NMFA's newest program, which is to provide funding for infrastructure in communities that qualify as colonias. She indicated that the budget for the colonias program is completely derived from severance tax bond proceeds. (The Colonias Infrastructure Project Fund (CIPF) receives 5% of the estimated bonding capacity each year.) She reported that costs for the colonias program fluctuate due to the program's newness but that future templates for grants and loans should stabilize professional costs.

In reporting on the Local Government Planning Fund (LGPF), Ms. Trujillo said that the fund began with a focus on planning for water and wastewater projects and required repayment by the grantee if the planning resulted in a project. Eventually, this was expanded by the legislature to include water conservation and economic development plans. Later this was expanded again to include all infrastructure plans and the repayment requirement was removed. The LGPF, as projected for the NMFA's 2015 budget, will require 4.39% of the NMFA's total budget. Ms. Trujillo said that because the program was broadened, activity and costs have increased.

Ms. Trujillo stated that Smart Money LPP costs by category as proposed for 2015 will be at 1.14% of the NMFA's total budget. The Collateral Support PP costs by category for 2015 will

be at 4.96% of the NMFA's total budget, she added. The new market tax credits budgeted costs for 2015 will be at 7.81% of the NMFA's total budget. She then spoke about some of the NMFA's smaller programs, which include the Behavioral Health Capital Fund, the Child Care Facility Revolving Loan Fund, local government transportation projects under the Department of Transportation (Governor Richardson's Investment Program, or "GRIP", funding, which is being closed out) and the Primary Care Capital Fund, all of which represent 4.32% of the NMFA's total budget as proposed for 2015.

For 2015, the NMFA's proposed budget is \$8.65 million. Ms. Trujillo highlighted that from fiscal year 2012 through fiscal year 2015, the NMFA's total revenues have increased by 1.7%.

The chair then opened up the meeting to questions and concerns from committee members. Questions and responses included the following.

- The NMFA's external auditors will complete their work by December 2014.
- The overall number of full-time-equivalents at the NMFA has remained the same, but the allocation of staff between programs is likely to shift.
- Not until 2020 will the bonds in the GRIP program be paid off and the program closed entirely; although no additional money is going to the program, there are projects in progress that are still drawing reimbursements.
- The NMFA continues to work with issues of refinancing on GRIP and other bonds, but this will not affect the budget.
- The NMFA's need for automation is critical, as it wastes time doing manual spreadsheets when loan officers could be out in the field providing outreach.
- The backing of the GGRT allows the NMFA to provide low-cost loans, which the bond rating agencies take into account when evaluating the NMFA's bonding program; the NMFA has a triple-A rating from Standard & Poor's.

Committee members requested that the NMFA share its risk assessment report with the oversight committee.

#### **Light at the End of the Tunnel: Compliance with 2012 Audit Recommendations**

The NMFA presented a handout showing its process in tracking and correcting findings after its fraudulent audit, with a matrix that scores progress in each item tracked. Mr. Coalter said that of all of these items, two have not been completed: (1) filling the internal auditor position; and (2) system automation through SILO. He stated that all employees at the NMFA are willing to engage in what is required to get SILO going. Mr. Coalter indicated that the NMFA must ensure that procedures are in place for each position so that when an employee leaves, the function can successfully continue. He also said that the NMFA needs to free up time to get into communities more and also to improve compliance. The NMFA has hired a consultant, he stated, and part of the process over the next few months will be to document procedures of all employees from the ground up. He added that the NMFA staff has



begun to put together what is needed and wanted in a system. In addition, a data dictionary or document is being developed that all can use that defines each term in each program so all are using the same language. He provided a time line for undertaking system readiness that includes: preparation of documents; review of requirements and needs; issuance of an RFP; receipt and evaluation of responses; and completion of the RFP process.

Legislators expressed concern over putting an automated system in place, given the difficulties encountered with the SHARE system, and requested that a copy of the point system used to evaluate bids for the RFP be sent to committee members.

#### **El Agua Es Vida: Follow-Up on Availability of Emergency Fund for Ancones and El Llanito**

Representative Rodella reported that the State Board of Finance (SBOF) held a meeting on July 15, and the two projects that did not receive funding for Ancones and El Llanito were on the agenda. The SBOF approved emergency funding for \$87,900 for these projects, for which bonds will now be sold.

#### **Fountains of Hope: DWSRLF and WTF Programs — Applications and Approvals; Case Studies: Grindstone Dam, Alto Lakes and Ute Pipeline**

Ms. Russel spoke about the creation of the DWSRLF, which is a low-cost way that small and disadvantaged systems may address construction, rehabilitation and compliance needs. The program is administered by both the NMED and the NMFA, she added, and 27% of each grant is available to the NMED to perform services such as capacity development and technical assistance. She said that the NMED has the authority to choose projects for funding. The NMFA then makes the loans and administers the funds, she added, and is required to make loans at or below market interest rates. At least 20% of the funding has to benefit systems in the form of a grant, negative interest rate or principal forgiveness, which are all grant-like terms, she explained. The program has been capitalized at \$163,623,500 to date. Ms. Russel gave details of several loans made, saying that \$30 million in loans had been obligated, but funds were not drawn down, and the program is very different now from when the Legislative Finance Committee visited and drew up its report. The unspent fund total has dropped from 30% two years ago to 20% at present and is projected to drop further, to 2% by January 2015. She added that the state has many programs in place to fund water projects and that the drawbacks of the DWSRLF are that it does not fund water rights, dam rehabilitation or reservoir improvements. Also, these projects have to go through a substantial environmental review process that can be time intensive and costly, as the funds come through the EPA. Ms. Russel reported that 78 projects have been funded to date through the DWSRLF, totaling over \$150 million.

Bobbie Rose, community development director, Village of Ruidoso; Debi Lee, village manager, Village of Ruidoso; David Edington, district manager, Alto Lakes Water and Sanitation District (WSD); and Paul van Gulick, project manager, Occam Consulting Engineers, Inc., presented their experiences seeking and receiving funding for water projects.

Ms. Lee described the disasters that Ruidoso has been through in the past few years, including two floods, a freeze and two fires, which caused bridges to be washed away, water breaks throughout town and loss of homes, buildings and the village's watershed. Water had to be pumped from the confluence of Carrizo Creek and Rio Ruidoso, and lines were installed to accomplish this, she added. In addition, after the fires, Grindstone Dam dropped to 56 feet below the spillway and water was being pumped from the bottom of the dam, which created unsafe drinking water and caused the NMED to issue an administrative order to the Village of Ruidoso. Ms. Lee said that the village needs 10 bridges and has only been able to replace one. The Federal Emergency Management Agency (FEMA) projects now in progress as a result of these disasters total over \$68 million. Both FEMA and the federal Department of Homeland Security want the village to front money for infrastructure projects, but the village cannot do this. She said that the village was four years behind on its audits and \$10 million out of balance on its budget, and its finances were in a disastrous state five years ago. The village has now declared water issues to be its highest priority and is looking to all possible funding sources. Ms. Lee explained that Ruidoso's water system is complex, with 41 different pressure zones, 13 wells with water rights and many antiquated water tanks. All sources of water production produce 2.6 million gallons of water a day. She added that the village has taken aggressive steps that include getting itself in order financially, creating a new water rates ordinance, passing a general obligation bond issue to replace leaky pipes, applying for funding from many sources, decreasing operating costs, reducing staff, leveraging resources, updating its water plan, replacing meters and adopting a water source protection plan. She stated that all of this is required as part of the WTB application process for funding.

Ms. Rose spoke about difficulties encountered with the Grindstone Dam liner project when applying for WTB funding for this \$4.5 million project. She said that the dam's integrity was compromised, with one million gallons of water leaking from it daily. The village attempted to recuperate water with pumps, but this proved costly, she added. This led to the decision to install a liner on the dam, which would address leakage and stability issues. The funding challenges included: Executive Order 2013-006 and subsequent audit findings; that funding applications are burdensome for small communities; changing project scopes during the application process; and communication issues between the entities and agencies. She explained that Ruidoso was on a roller coaster ride: it had been qualified, then disqualified, for funding over and over. At last, Ruidoso qualified for 2014 funds and will finally have full funding available for the liner project, she reported.

Mr. Edington stated that the Alto Lakes WSD has 1,275 residential homeowners, of which 40% to 50% are permanent residents. He said this area faces the same financial challenges as the Village of Ruidoso and that, for a small system, these are nearly insurmountable. The biggest concern, he explained, is leveraging finances, and with a budget of under \$3 million each year, everything must be leveraged. In citing differences between applying for funding from the DWSRLF or through the WTB process, Mr. Edington said that both application processes are daunting, but funds are available sooner through the DWSRLF process, and if the requirements are met, the loan is pretty much ensured. With the WTB

process, however, you could meet all application requirements yet not be approved for a loan or you could be selected but still not get a loan because funding runs out. He also pointed out that it is more costly to complete a project with DWSRLF funding than with WTB funding because of administrative costs.

Mr. van Gulick spoke about the dying of the Ogallala Aquifer and gave an update on the Ute Pipeline Project, which is in Phase 1 construction. This is the largest work phase to date and includes a vertical shaft, intake bench and tunnel. It will be completed by the end of September. The reservoir was built in 1963 to mitigate the effects of the death of the aquifer, he added. The next phase will be the interconnection of surrounding communities in four pipeline packages that will include Clovis, Cannon Air Force Base, Portales and Texico. He stated that this is one of the largest regional projects in the state and will eventually include both Melrose and Elida. The project will be shovel-ready in 2015. Mr. van Gulick said that the project could not be constructed until all funding was in place and that it could not receive federal dollars until this happened. He then held up a WTB application to show to committee members. It was about five inches high. He said that the supporting documentation required is immense.

The chair then opened up the meeting to questions and concerns from committee members. Questions and responses included the following.

- Insurance rates went up somewhat due to the fires and floods in Ruidoso, and a coalition has been formed between the village and U.S. Forest Service to take care of cutting and clearing the land.
- The final estimate of funding provided for the Ute project is 75% federal funding, 15% state funding and 10% local funding.
- For the Ute project, there is no repayment obligation on federal funding, and the local portion is paid for according to the amount of water used, with Clovis and Portales being the predominant users.
- Although the supporting documentation changes with projects over time, the engineering documentation does not; still, a huge amount of paper is produced that requires tracking, which can prove difficult for smaller communities.
- The executive order put in place after the capital outlay bill was signed (Executive Order 2013-006) was challenged as unconstitutional — it essentially gives the governor unlimited veto power; cities and counties could challenge the executive order if they have had money held up by getting it rescinded through a court order.
- With Senate Bill (SB) 112 from the 2014 legislative session, the democratic process was intact, given that projects were vetted in several committee meetings and viable projects, such as the Grindstone Dam and Ute projects, were added into the bill after testimony was heard on their viability.
- For the Ute project, all funds are encumbered, although they may not yet be expended, and the project is shovel-ready; the project is receiving increasing

amounts from the federal government each year, and communities are coming together to bond all they can to pay for the results of the disasters facing them.

- Having a state fund that could be drawn upon to assist systems in smaller communities or instituting a different funding process for those communities is needed.

Responding to a request made by committee members, Ms. Lee said she would be glad to put together a position paper for the committee and WTB staff on the funding process from a small community perspective.

### **Legislative Priorities or Throwing the Baby out with the Bath Water: SB 112 (2014 Regular Session)**

Ms. Russel gave a brief history of the procedures in place prior to the introduction of SB 112, saying that the WTB has been providing project information to the NMFA Oversight Committee earlier in the year so that it has a sense of the proposed content of the authorization bill. To do that, the application process was changed to require entities to get their applications in earlier so that an overview of each project in terms of applicants' status, project descriptions and amounts requested could be reviewed at the committee's October meeting. The altered time frame means that applicants are allowed time from October through April to complete their applications, whereas before they only had 30 days. SB 112 contained a shorter list of projects than was presented to the interim committee and included \$120 million in projects; the WTB had \$30 million available.

Ms. Russell touched on some vetting criteria: whether there was a federal match; if the project was shovel-ready; whether health or safety issues were being addressed; if the project was new to WTB funding; or if the entity had made multiple requests previously. This year, the NMFA added a questionnaire to gather more project information for the legislature and to catch any problems with applications well ahead of time so they can be addressed. Mr. Coalter added that the WTB wants legislative input on what is needed to further change the vetting process. Debbie Hughes, a WTB member, said that she has conveyed many of the legislative concerns to the WTB, but she is not on its policy committee. She said that major rule changes made last year have hurt small communities, but there is not time to change the rules this year.

Continued concern was expressed by members regarding the selection of projects for the WTB authorization bill; the need for the committee to see a realistic list of proposed projects that it can then approve; and the time frame under which projects are funded and, once authorized, remain eligible for funding.

Among the requests made by committee members for follow-up actions are the following:

- have the WTB policy committee make a presentation at the next meeting;

- delineate the WTB's process in determining project funding;
- dedicate time at the next meeting to continue exploring the unresolved issues related to the WTB authorization bill and to come up with a plan for legislative action;
- review the current makeup of the WTB and proposed changes in SB 112; and
- discuss the question of a demonstration of water rights for the WTB to approve a project.

## **Friday, July 18**

### **Approved Colonias Infrastructure Fund Applications: A Colonia in Ruidoso Downs?**

Rick Martinez, director of business development, NMFA, talked about two colonias infrastructure projects, one in the Agua Fria subdivision near Ruidoso, where an EPA order was issued because of wastewater discharge into the river, and the other for a water system in Nogal, which was funded with WTB, colonias and federal funds. He said that 47 projects were funded for colonias projects and, of those, \$14 million was funded from the CIPF. Mr. Martinez stated that this year is the NMFA's most successful in funding colonias projects due to a more efficient funding and application process.

As defined in the Colonias Infrastructure Act, "colonia" means a rural community with a population of 25,000 or less located within 150 miles of the United States-Mexico border that lacks basic infrastructure as defined in that act, Mr. Martinez explained. There are 155 designated colonias, with the farthest north being San Antonio, he said. He added that communities can approach cities or counties to be designated as colonias and that since the program began, only two have been designated.

Gary L. Williams, mayor, Ruidoso Downs, spoke about the misconception regarding the level of affluence in Ruidoso Downs. He clarified that Ruidoso is affluent, but Ruidoso Downs is really a community where the racetrack happens to be. He added that the Downs Racetrack has benefited greatly from the colonia designation of Ruidoso Downs. He said that both Ruidoso and Ruidoso Downs were involved in a lawsuit because of the contaminants released into the river from the wastewater plant and that they were both mandated to do something about this problem. They became partners in building a state-of-the-art wastewater treatment plant, which is one of the top five in the country and cost \$32 million. In order to ensure that contamination does not continue, they are working at putting a septic system in place, and the Agua Fria subdivision is where this would begin, he explained. He said that they have accessed funding from the CIPF for the past two years. Mr. Martinez explained that funding is awarded based on workable phases, and the colonias board ensures that each phase funded is stand alone and workable. Mayor Williams added that he keeps technical documents for each phase and that as each phase is completed, the homes in that phase become part of the larger system. Mr. Martinez said that the councils of governments work with the smaller communities on their applications and assist with legal advice. Also, when

an area is unincorporated, rates are considered in the application process and have to meet the NMFA's criteria, and the NMFA works with entities on rate structuring.

Questions and responses included the following.

- Before passage of the New Mexico Subdivision Act, subdividers could split and sell lots without providing infrastructure.
- An aerobic septic system is mandated by the EPA and is much more expensive at \$12,000 a system compared to around \$4,000 for a conventional one.
- It is the residents' responsibility to connect their systems to the city's streets, and the city hooks into them from that point.
- The CIPF was capitalized at \$14 million this year.

Among the requests made by committee members for follow-up actions are the following:

- a report that indicates all projects funded from the CIPF and the Tribal Infrastructure Project Fund, the criteria used for project selection and how much has been leveraged for projects and the funding sources for each project;
- a way for legislators to learn what other funding has been sought for capital outlay projects requested to be funded through the legislature;
- the NMFA will provide a flow chart of the CIPF review process; and
- inviting the colonias board and the county officials to attend the upcoming Las Cruces meeting.

### **Engineering Fees; Understanding the Memoranda**

Martin Lopez, general manager, and Karen Nichols, projects manager, Lower Rio Grande Public Water Works Authority (LRGPWWA), addressed the committee on problems and possible solutions on funding for regional and mutual domestic water consumer association (MDWCA) capital projects. Ms. Nichols said that in 2009, five MDWCAs were consolidated into the LRGPWWA, and over time, the organization has grown and now serves 14 colonias. The area is 15 miles south of Las Cruces and covers about 100 square miles, with 70 miles of water line serving 500 connections. She said that they have been learning about the funding processes over time and have received funding from the PPRF, the CIPF, the WTB and the DWSRLF, but communities are often caught in the middle between the NMED's review and oversight functions and the funding processes at the NMFA. Ms. Nichols cited many areas of concern, including: documents having to be resubmitted because the memorandum of understanding (MOU) has not been in continual effect; the NMED's review is not consistent among projects; and engineering reviews are taken as final without consideration of other factors, which results in extra cost.

Ms. Nichols gave some specific examples of these issues of delays and redoing of project applications and reviews that include: a WTB project for a water treatment facility that was delayed due to expiration of the MOU; a DWSRLF project that was delayed due to

reviewer misunderstanding; delays on an engineering report for water system improvements due to the NMED not following standard review guidelines; and problems with the Berino/Mesquite-Del Cerro water system project due to an NMED reviewer's interpretation of Procurement Code requirements. Ms. Nichols stated that the first time the LRGPWWA had an amendment to an engineering agreement, it was forced by the NMED to complete an entirely new agreement, which was subject to more fees. In another case, new criteria were added to an application because the NMED realized there was more than one funding source, she added. The LRGPWWA's current concern is the Berino/Mesquite-Del Cerro project, which is finally under construction but which has been through several ups and downs related to bidders coming in over budget and the NMED requiring re-bidding when rural development reviewers did not. Now, the LRGPWWA will have to go before the WTB to request a time extension on these funds.

Mr. Lopez stated that the LRGPWWA acknowledges the need for review and oversight of public funds, but it would like to have standardized guidelines followed to avoid the pitfalls of this review/re-review process in which the LRGPWWA keeps getting mired. He wondered if the LRGPWWA could request a different reviewer at the NMED when projects are delayed.

Questions and responses included the following.

- There was concern that no one from the NMED was present at the meeting to provide input and dialogue on these issues.
- Most NMED programs are fee-based, and perhaps the agency needs a change in its budget to accommodate increased costs to the agency; this needs to be clarified for the committee.
- Plans and specifications for projects funded through the WTB must be approved by the NMED, and the NMFA has an MOU with the NMED in which it negotiated a fee of approximately \$75.00 per hour to be paid to the NMED; the NMFA contracts with the Construction Programs Bureau of the NMED to cover project oversight costs.

Among the requests made by committee members for follow-up actions are the following:

- invite the secretary of environment to the next meeting;
- a report on the breakdown of fees for the NMFA's programs; and
- an update on the Mesa del Sol tax increment development district (TIDD), on transportation issues related to how much the Department of Transportation has paid the NMFA for the management of GRIP bonds and a better understanding of how TIDD programs are working.

## **Adjournment**

There being no further business, the committee adjourned at 10:26 a.m.